IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 641 of 2005

Gulab Rambhau Mahale .. Appellant

versus

Bandu Rambhau Mahale & Anr. .. Respondents

...

Mr.P.N. Joshi for the appellant.

Mr.S.M.Sabrad for the respondent no.1.

CORAM : B.H. MARLAPALLE,J

DATED : 4th October 2005

P.C.:

1. Heard Mr.Joshi, the learned counsel for the appellant defendant nos.1 and 2. Special Civil Suit no.6 of 2004 came to be filed before the learned Civil Judge, Sr. Division at Niphad by the present respondent no.1 for partition and possession of the respective shares of the property left behind by

deceased Abazi and Rambhau. The plaintiff, the defendant no.1 and defendant no.3 are the children of deceased Rambhau and the application filed at Exhibit-5 for temporary injunction has been allowed by the Court below vide its order dated 19.4.2004 and hence, this appeal against the said order.

2. By the impugned order, the defendants have been restraining from alienating the suit properties by any mode or creating any more encumberances till the final decision of the suit. The appellants are aggrieved by the second part of the impugned order viz.. the injunction from creating in any more encumberances on it. Obviously, this would imply that additional encumberances have been restrained and not the existing i.e. prior to 19th April 2004. If the plaintiffs have borrowed Rs.5,90,000/- from the ICICI Home Finance and created an encumbrance on the building under construction which is part of the suit property prior to 19th April 2004, this injunction order would not come in any way cause prejudice to the appellants.

3. Even otherwise with the passage of time, prayer for modification of the impugned order cannot

be considered and it would be in the interest of both the parties that the pending suit is expedited.

4. Hence, appeal is disposed of with the direction that Special Civil Suit no.6 of 2004, if pending before the learned Civil Judge, Sr. Division at Niphad is heard and decided as expeditiously as possible and preferably by 31st March 2006. Writ to go to the Court below forthwith.

B.H. MARLAPALLE, J